

AMENDED IN ASSEMBLY MAY 6, 1999
AMENDED IN ASSEMBLY APRIL 27, 1999

CALIFORNIA LEGISLATURE—1999–2000 REGULAR SESSION

ASSEMBLY BILL

No. 831

Introduced by Assembly Member Leach
(Coauthors: Assembly Members Ackerman, Campbell, Cox,
Cunneen, and Zettel)
(Coauthors: Senators Knight and Morrow)

February 24, 1999

An act to amend Sections 17001 and 17050 of the Corporations Code, relating to limited liability companies.

LEGISLATIVE COUNSEL'S DIGEST

AB 831, as amended, Leach. Limited liability companies: formation.

Existing provisions of the Beverly-Killea Limited Liability Company Act authorize the creation of, and govern the activities of, limited liability companies. Existing law generally requires those entities to have 2 or more members.

This bill would permit limited liability companies to have one member.

Vote: majority. Appropriation: no. Fiscal committee: no. State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 17001 of the Corporations Code
2 is amended to read:

3 17001. Unless the context otherwise indicates, the
4 following definitions govern the construction of this title:

5 (a) “Acknowledged” means that an instrument is
6 either of the following:

7 (1) Formally acknowledged as provided in Article 3
8 (commencing with Section 1180) of Chapter 4 of Title 4
9 of Part 4 of Division 2 of the Civil Code.

10 (2) Executed to include substantially the following
11 wording preceding the signature: It is hereby declared
12 that I am the person who executed this instrument, which
13 execution is my act and deed.

14 Any certificate of acknowledgment taken without this
15 state before a notary public or a judge or clerk of a court
16 of record having an official seal need not be further
17 authenticated.

18 (b) “Articles of organization” means articles of
19 organization filed under Section 17050, including all
20 amendments thereto or restatements thereof, or, in the
21 case of a foreign limited liability company, all documents
22 that serve a like function under the laws of the jurisdiction
23 in which the foreign limited liability company is
24 organized.

25 (c) “Bankrupt” or “bankruptcy” means, with respect
26 to any person, being the subject of an order for relief
27 under Title 11 of the United States Code, or any successor
28 statute or other statute in any foreign jurisdiction having
29 like import or effect.

30 (d) “Capital account” means, unless otherwise
31 provided in the operating agreement, the amount of the
32 capital interest of a member in the limited liability
33 company consisting of that member’s original
34 contribution, as (1) increased by any additional
35 contributions and by that member’s share of the limited
36 liability company’s profits, and (2) decreased by any
37 distribution to that member and by that member’s share
38 of the limited liability company’s losses.



1 (e) “Constituent limited liability company” means a
2 limited liability company that is merged with or into one
3 or more other limited liability companies or other
4 business entities and includes a surviving limited liability
5 company.

6 (f) “Constituent other business entity” means any
7 other business entity that is merged with or into one or
8 more limited liability companies and includes a surviving
9 other business entity.

10 (g) “Contribution” means any money, property, or
11 services rendered, or a promissory note or other binding
12 obligation to contribute money or property, or to render
13 services as permitted in this title, which a member
14 contributes to a limited liability company as capital in that
15 member’s capacity as a member pursuant to an
16 agreement between the members, including an
17 agreement as to value.

18 (h) “Disappearing limited liability company” means a
19 constituent limited liability company that is not the
20 surviving limited liability company.

21 (i) “Disappearing other business entity” means a
22 constituent other business entity that is not the surviving
23 other business entity.

24 (j) “Distribution” means the transfer of money or
25 property by a limited liability company to its members
26 without consideration.

27 (k) “Domestic” means organized under the laws of
28 this state when used in relation to any limited liability
29 company, other business entity or person (other than a
30 natural person).

31 (l) “Domestic corporation” means a corporation as
32 defined in Section 162.

33 (m) “Domestic limited partnership” means a
34 partnership formed by two or more persons under the
35 laws of this state and having one or more general partners
36 and one or more limited partners.

37 (n) “Economic interest” means a person’s right to
38 share in the income, gains, losses, deductions, credit, or
39 similar items of, and to receive distributions from, the
40 limited liability company, but does not include any other

1 rights of a member, including, without limitation, the
2 right to vote or to participate in management, or, except
3 as provided in Section 17106, any right to information
4 concerning the business and affairs of the limited liability
5 company.

6 (o) [RESERVED]

7 (p) “Foreign corporation” means a corporation
8 formed under the laws of any state other than this state
9 or under the laws of the United States or of a foreign
10 country.

11 (q) “Foreign limited liability company” means either
12 (1) an entity formed under the limited liability company
13 laws of any state other than this state, or (2) an entity
14 organized under the laws of any foreign country that is
15 (A) an unincorporated association, (B) organized under
16 a statute pursuant to which an association may be formed
17 that affords each of its members limited liability with
18 respect to the liabilities of the entity, and (C) not an
19 entity that is required to be registered or qualified
20 pursuant to the provisions of Title 1 (commencing with
21 Section 100) or Title 2 (commencing with Section 15001);
22 but the term “foreign limited liability company” does not
23 include a foreign association, as defined in Section 170.

24 (r) “Foreign limited partnership” means a
25 partnership formed under the laws of any state other than
26 this state or under the laws of a foreign country and
27 having as partners one or more general partners and one
28 or more limited partners or their equivalents under any
29 name.

30 (s) “Foreign other business entity” means any other
31 business entity formed under the laws of any state other
32 than this state or under the laws of the United States or
33 of a foreign country.

34 (t) “Limited liability company” or “domestic limited
35 liability company” means an entity having one or more
36 members that is organized under this title and is subject
37 to the provisions of Section 17101.

38 (u) “Mail” unless otherwise provided in the operating
39 agreement, means first-class mail, postage prepaid, unless



1 registered mail is specified. Registered mail includes
2 certified mail.

3 (v) “Majority in interest of the members,” unless
4 otherwise provided in the operating agreement, means
5 more than 50 percent of the interests of members in
6 current profits of the limited liability company.

7 (w) “Manager” means a person elected by the
8 members of a limited liability company to manage the
9 limited liability company if the articles of organization
10 contain the statement referred to in subdivision (b) of
11 Section 17151 or, if the articles of organization do not
12 contain that statement, “manager” means each of the
13 members of the limited liability company.

14 (x) “Member” means a person who:

15 (1) Has been admitted to a limited liability company
16 as a member in accordance with the articles of
17 organization or operating agreement, or an assignee of an
18 interest in a limited liability company who has become a
19 member pursuant to Section 17303.

20 (2) Has not resigned, withdrawn, or been expelled as
21 a member or, if other than an individual, been dissolved.

22 (y) “Member of record” means a member named as a
23 member on the list maintained in accordance with
24 paragraph (1) of subdivision (a) of Section 17058.

25 (z) “Membership interest” means a member’s rights
26 in the limited liability company, collectively, including
27 the member’s economic interest, any right to vote or
28 participate in management, and any right to information
29 concerning the business and affairs of the limited liability
30 company provided by this title.

31 (aa) “Officer” means any person elected or appointed
32 pursuant to Section 17154.

33 (ab) “Operating agreement” means any agreement,
34 written or oral, between all of the members as to the
35 affairs of a limited liability company and the conduct of
36 its business in any manner not inconsistent with law or the
37 articles of organization, including all amendments
38 thereto, or, in the case of a foreign limited liability
39 company, all documents that serve a like function under
40 the laws of the jurisdiction in which the foreign limited

1 liability company is organized. The term “operating
2 agreement” may include, without more, an agreement
3 between all the members to organize a limited liability
4 company pursuant to the provisions of this title.

5 (ac) “Other business entity” means a corporation,
6 limited partnership, general partnership, business trust,
7 real estate investment trust, or an unincorporated
8 association (other than a nonprofit association), but
9 excluding a domestic limited liability company and a
10 foreign limited liability company.

11 (ad) “Parent,” when used in relation to a specified
12 limited liability company, means a person who owns,
13 directly or indirectly, membership interests possessing
14 more than 50 percent of the voting power of the specified
15 limited liability company. When used in relation to a
16 specified corporation or limited partnership, the term
17 “parent” shall have the meanings set forth in Section 1200
18 and subdivision (v) of Section 15611, respectively.

19 (ae) “Person” means an individual, partnership,
20 limited partnership, trust, estate, association,
21 corporation, limited liability company, or other entity,
22 whether domestic or foreign.

23 (af) [RESERVED]

24 (ag) [RESERVED]

25 (ah) [RESERVED]

26 (ai) “Proxy,” unless otherwise provided in the
27 operating agreement, means a written authorization
28 signed or an electronic transmission authorized by a
29 member or the member’s attorney-in-fact giving another
30 person the power to exercise the voting rights of that
31 member. “Signed,” for the purpose of this section, means
32 the placing of the member’s name on the proxy (whether
33 by manual signature, typewriting, telegraphic or
34 electronic transmission, or otherwise) by the member or
35 member’s attorney-in-fact.

36 A proxy may be transmitted by an oral telephonic
37 transmission if it is submitted with information from
38 which it may be determined that the proxy was
39 authorized by the member, or by the member’s
40 attorney-in-fact.



(aj) “Return of capital,” unless otherwise provided in the operating agreement, means any distribution to a member to the extent that the member’s capital account, immediately after the distribution, is less than the amount of that member’s contributions to the limited liability company as reduced by prior distributions that were a return of capital.

(ak) “State” means a state, territory, or possession of the United States, the District of Columbia, or the Commonwealth of Puerto Rico.

(al) “Subsidiary of a specified limited liability company” means a limited liability company or other business entity in which shares, interests, or other securities possessing more than 50 percent of the voting power are owned by the specified limited liability company.

(am) “Surviving limited liability company” means a limited liability company into which one or more other limited liability companies or other business entities are merged.

(an) “Surviving other business entity” means an other business entity into which one or more limited liability companies are merged.

(ao) “Time a notice is given or sent,” unless otherwise expressly provided, means the time a written notice is deposited in the United States mails; is personally delivered to the recipient, is delivered to a common carrier for transmission, or is actually transmitted by the person giving the notice by electronic means, to the recipient; or the time any oral notice is communicated, in person or by telephone, to the recipient or to a person at the office of the recipient who the person giving the notice has reason to believe will promptly communicate it to the recipient.

(ap) “Transact intrastate business” means to enter into repeated and successive transactions of business in this state, other than in interstate or foreign commerce.

(1) Without excluding other activities which may not be considered to be transacting intrastate business, a foreign limited liability company shall not be considered

1 to be transacting intrastate business merely because its
2 subsidiary transacts intrastate business, or merely
3 because of its status as any one or more of the following:

4 (A) A shareholder of a domestic corporation.

5 (B) A shareholder of a foreign corporation transacting
6 intrastate business.

7 (C) A limited partner of a foreign limited partnership
8 transacting intrastate business.

9 (D) A limited partner of a domestic limited
10 partnership.

11 (E) A member or manager of a foreign limited liability
12 company transacting intrastate business.

13 (F) A member or manager of a domestic limited
14 liability company.

15 (2) Without excluding other activities which may not
16 be considered to be transacting intrastate business, a
17 foreign limited liability company shall not be considered
18 to be transacting intrastate business within the meaning
19 of this subdivision solely by reason of carrying on in this
20 state any one or more of the following activities:

21 (A) Maintaining or defending any action or suit or any
22 administrative or arbitration proceeding, or effecting the
23 settlement thereof or the settlement of claims or disputes.

24 (B) Holding meetings of its managers or members or
25 carrying on any other activities concerning its internal
26 affairs.

27 (C) Maintaining bank accounts.

28 (D) Maintaining offices or agencies for the transfer,
29 exchange, and registration of the foreign limited liability
30 company's securities or maintaining trustees or
31 depositaries with respect to those securities.

32 (E) Effecting sales through independent contractors.

33 (F) Soliciting or procuring orders, whether by mail or
34 through employees or agents or otherwise, where those
35 orders require acceptance without this state before
36 becoming binding contracts.

37 (G) Creating or acquiring evidences of debt or
38 mortgages, liens, or security interests in real or personal
39 property.

1 (H) Securing or collecting debts or enforcing
2 mortgages and security interests in property securing the
3 debts.

4 (I) Conducting an isolated transaction that is
5 completed within 180 days and not in the course of a
6 number of repeated transactions of a like nature.

7 (3) A person shall not be deemed to be transacting
8 intrastate business in this state merely because of its status
9 as a member or manager of a domestic limited liability
10 company or a foreign limited liability company registered
11 to transact intrastate business in this state.

12 (aq) "Vote" includes authorization by written
13 consent.

14 (ar) "Voting power" means the power to vote on any
15 matter at the time any determination of voting power is
16 made and does not include the right to vote upon the
17 happening of some condition or event which has not yet
18 occurred.

19 (as) "Withdrawal" includes the resignation or
20 retirement of a member as a member.

21 (at) "Written" or "in writing" includes facsimile and
22 telegraphic communication.

23 SEC. 2. Section 17050 of the Corporations Code is
24 amended to read:

25 17050. (a) In order to form a limited liability
26 company, one or more persons shall execute and file
27 articles of organization with, and on a form prescribed by,
28 the Secretary of State and, either before or after the filing
29 of articles of organization, the members shall have
30 entered into an operating agreement. The person or
31 persons who execute and file the articles of organization
32 may, but need not, be members of the limited liability
33 company.

34 (b) A limited liability company shall have one or more
35 members.

36 (c) The existence of a limited liability company begins
37 upon the filing of the articles of organization. For all
38 purposes, a copy of the articles of organization duly
39 certified by the Secretary of State is conclusive evidence

- 1 of the formation of a limited liability company and prima
- 2 facie evidence of its existence.

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